



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/562,834

12/30/2005

Vincenzo Gargiulo

2501-1012

8392

466 7590 10/12/2006

YOUNG & THOMPSON  
745 SOUTH 23RD STREET  
2ND FLOOR  
ARLINGTON, VA 22202

EXAMINER

LEWIS, RALPH A

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/562,834

Applicant(s)

GARGIULO, VINCENZO

Examiner

Ralph A. Lewis

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____                                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____   | 6) <input type="checkbox"/> Other: ____                           |

### **Objection to the Claims**

Claims 11-15 are objected to under 37 CFR 1.75(i) which requires each element or step of the claimed invention to be separated by a line indentation.

### **Rejections based on 35 U.S.C. 112, second paragraph**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In general the claims are awkwardly written and difficult to follow with grammatical errors. Applicant is encouraged to revise the claims so as to set forth the claimed invention in a clear and logical manner.

Additionally in claim 11, lines 10 and 11, the "arranged on a U-like configuration" is unclear and confusing. Apparently the limitation is in reference to the illustrated U-shaped retractor blades. Moreover, it is suggested that applicant clearly set forth the structure of the U-like member at lines 10 and 11, so as to provide antecedent basis support for the "channel," "inner plane," "projecting structure" and "inner surface" limitations that are used in the series of optic fiber limitations at the end of the claim.

### **Rejections based on Prior Art**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent 04090753.

'753 discloses a dental cheek retractor having U-shaped retractor members 4a and 4b each having a series of optic fibers 7 terminating at the surface thereof to provide light to the patient's mouth. The '753 retractor includes a semirigid bow 5 for maintaining the retractor members 4a and 4b in an extended position. In regard to the limitations as to how the semirigid bow is selected from a set of different sized bow members, it is noted the manner in which applicant intends for parts of the claimed device to be selected fails to impose any objectively ascertainable structural distinctions from the '753 device.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanessee Patent 04090753 in view of Shulman (US 5,097,820).

To the limited extent that the present claims could possibly be interpreted as requiring a kit including the claimed retractor plus a plurality of interchangeable different sized semirigid bows, the examiner notes that it is old and well known to provide oral retractors a set of differently sized interchangeable pieces so that the retractor can be sized for a particular patient as is evidenced by Shulman who teaches interchangeable arms 12 and 13 of different sizes so as to accommodate different sized patients (note column 8, lines 6-12). To have merely provided the '753 retractor with different sized semirigid retractor bows so that the '753 retractor could be modified to accommodate different sized patients as taught by Shulman would have been obvious to one of ordinary skill in the art.

#### **Prior Art**

Applicant's information disclosure statement of 30 December 2005 has been considered and an initialed copy enclosed herewith.

Hirsch et al (US 6,974,321) is made of record.


#### **Allowable Subject Matter**

Claims 11, 14 and 15 would be allowable if rewritten to overcome the 35 U.S.C. 112, second paragraph rejection above.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Cris Rodriguez, can be reached at (571) 272-4964.

R. Lewis  
September 29, 2006

  
Ralph A. Lewis  
Primary Examiner  
AU 3732